

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petitions for Waiver of Universal Service High-)	WC Docket No. 08-71
Cost Filing Deadlines)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Connect America Fund – Alaska Plan)	WC Docket No. 16-271
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	

**PEÑASCO VALLEY TELEPHONE COOPERATIVE, INC. REQUEST FOR
LIMITED WAIVER OF SECTION 54.316**

Peñasco Valley Telephone Cooperative, Inc. (“PVT”), by its attorneys and pursuant to Section 1.3 of the Commission’s rules, hereby requests a limited waiver of Section 54.316(c)(1). Specifically, PVT seeks limited waiver of the March 1, 2019 deadline for certifying broadband locations in the High Cost Universal Service Broadband (“HUBB”) system and, to the extent necessary, the associated penalty. As discussed in greater detail below, the requested waiver is appropriate because PVT timely submitted its location data ahead of the March 1 deadline, and its failure to certify was the result of an account entitlements error on the part of USAC. Once PVT was made aware of the deficiency, the company immediately worked with USAC to correct the necessary entitlements and certify its data. These points are discussed in greater detail below.

I. Factual Background

In September of 2018, PVT underwent changes in staff that typically handles the annual HUBB filing, including hiring a new Chief Financial Officer, Mr. Kurt Garrard. In December

2018, PVT filed amendments to its USAC accounts to transfer the appropriate officer entitlements to Mr. Garrard. A review of PVT's records indicate that it received confirmations for the transfer of officer entitlements transferred to those accounts of Mr. Garrard's associated with PVT's affiliates, PVT NetWorks, Inc. and Fuego Wireless, LLC, but not PVT. Nevertheless, PVT has not had any issues filing and certifying any other USAC filings, such as its Form 481 or Form 499-A filings, and therefore had no reason to be aware of any entitlements issue.

On February 27, 2019, Mr. Ian Brumana conducted the uploading of PVT's new locations to the HUBB portal as required by the Commission's rules.¹ At the time of uploading, no option to certify the filing appeared to be present. Similarly, when Mr. Garrard reviewed the filing using his own HUBB account, no certification option was present. (And indeed, the HUBB user guide indicates that the Certify button is only available to certifying officers.)² Accordingly, PVT reasonably believed its filing was complete on February 27.

On March 15, 2019 – a Friday – PVT was informed by USAC that it had failed to certify its HUBB filing. Through conversations with USAC that day and the following business day (Monday, March 18, 2019), it was eventually determined that PVT's location data had not been certified because officer entitlements were not properly transferred to PVT's account. PVT worked with USAC to resolve the entitlement issue, and PVT's officer promptly certified the same day.

On February 20, 2020, a NECA representative informed PVT via email that USAC had notified NECA that PVT had filed last year's 54.316(c)(1) certification seventeen days late, and

¹ See attachment: Screenshot of HUBB filing portal.

² HUBB User Guide at p. 12, available at <https://www.usac.org/wp-content/uploads/high-cost/documents/Tools/HUBB-User-Guide.pdf> (last visited March 27, 2020).

that PVT's January 2020 CAF BLS distribution would be reduced by approximately \$160,000. PVT received no notification whatsoever from USAC regarding this reduction; on the contrary, when PVT reached out to USAC for more information, USAC indicated it would not be issuing any formal statement or decision on the matter. On February 27, 2020, PVT received a NECA invoice indicating the reduction. Accordingly, PVT is filing the instant request for limited waiver.

II. Grant of a Limited Waiver is Warranted

Section 1.3 of the Rules permits the Commission's rules to be waived for good cause shown.³ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁴ In addition, the Commission may take into account considerations of hardship, equity, and the effective implementation of public policy on an individual basis.⁵ The Commission has waived the Section 54.316 certification deadline where there were issues with a filer account's officer entitlements.⁶

Good cause for granting PVT's request exists for a number of reasons. First, PVT made material and substantial attempts to comply with the annual reporting requirement. When PVT changed staff, it took timely steps to ensure that its accounts with USAC were correctly entitled

³ 47 CFR 1.3.

⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

⁶ *In re Petitions for Waiver of Universal Service High-Cost Filing Deadlines*, Order, WC Docket No. 08-71, et al., DA 19-1227, released December 2, 2019 ("*High Cost Waiver Order*"). PVT notes that although the Commission stated it "expects ... ETCs are familiar with their reporting requirements and the HUBB interface" and is "unlikely to grant future petitions with similar facts," the *High Cost Waiver Order* was issued in December of 2019, nine months after the filing in question.

to make the necessary certifications. For reasons unknown to PVT, such credentials were not correctly entitled. Although PVT does not have a record of confirmation for transfer, PVT was able to certify other USAC filings and as such, was not aware of any issue until the instant occurrence. When the filing deadline approached, PVT timely uploaded its location data to the HUBB portal on February 27, 2019 and had it reviewed by an officer. Because the HUBB portal does not make the Certify button available to accounts that do not have officer credentials and because PVT's accounts were not so credentialed, PVT was not aware the certification requirement remained incomplete. Second, PVT initiated efforts to certify its location data immediately after learning of the deficiency, and successfully certified within minutes of USAC updating the necessary entitlements. And in any event, PVT's certification was only eleven business days late. The Commission has waived filing deadlines where ETCs filed required data shortly after filing deadlines.⁷

Strict compliance with the rule would not be in the public interest. The Commission imposes support reductions on late filers "to impress upon high-cost recipients the importance of understanding obligations that come with high-cost funding and the need for the Commission and USAC to receive the data in a timely manner so that we can properly administer the Universal Service Fund."⁸ In this case, PVT's filing was only late because improper account entitlements prevented PVT from properly certifying an otherwise-timely submission. Further, it is unclear that grant of the requested waiver will have any adverse impact upon USAC's

⁷ *High Cost Waiver Order* citing e.g., *Petitions for Waiver of Universal Service High-Cost Filing Deadlines et al.*, CC Docket No. 08-71 et al., Order, 25 FCC Rcd 843, 853, para. 21 (WCB 2010) (granting waivers where the filings were submitted between one and fourteen business days after the deadline).

⁸ *In re Connect America Fund*, Report and Order, WC Docket No. 10-90, et al., FCC 14-190, released December 18, 2014 at ¶134.

administration of funds. USAC was in possession of PVT's location data in advance of the filing deadline, and had certification shortly thereafter. Yet, the reduction in PVT's support was not processed for a whole year. At the same time, strict enforcement of the rules would reduce the amount of money PVT would otherwise be putting into meeting its public interest obligations and continuing to narrow the digital divide. Accordingly, strict enforcement of the rules in this instance would not be in the public interest.

III. Conclusion

For the forgoing reasons, PVT submits that good cause, as well as considerations of hardship, equity, and the effective implementation of the Commission's universal service policies, warrant grant of PVT's requested waiver of the March 1, 2019 deadline and the penalties established by Section 54.316(c) of the rules. The requested waiver is consistent with Commission precedent, and is supported by PVT's timely uploading of the relevant location data; PVT's prompt certification the same business day its officer entitlement issues were resolved by USAC; the lack of any indication of significant adverse impact upon the Commission's or USAC's administration of high cost support for the current year; and the furtherance of the Commission's broadband deployment goals.

Respectfully submitted,

**PEÑASCO VALLEY TELEPHONE
COOPERATIVE, INC.**

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they were filed before the 2018 deployment year due date (March 1, 2019).

Upload Location File

No Locations To Upload

Upload Bulk Deletion File

Upload Bulk Modification File

Recently Uploaded Files

File Name	File Type	Uploaded	Progress	Records Uploaded	Data Errors & Warnings	Data Details
2019.csv	New Locations	Feb 28, 2020 12:28:37 PM	Complete	<div></div>	0 0	Review Data
2018.csv	New Locations	Feb 27, 2019 4:46:25 PM	Complete		0 0	Review Data
Broadband Validator.csv	New Locations	Feb 23, 2018 2:17:46 PM	Complete		0 0	Review Data

About Your Uploads

"On-Time" versus "Late"

"What is a Record?"

DECLARATION OF KURT GARRARD

I, Kurt Garrard, hereby declare under penalty of perjury that: I am the Chief Financial Officer of Peñasco Valley Telephone Cooperative, Inc.; that the forgoing document was prepared under my direction and supervision; and that the contents therein are true and correct to the best of my knowledge, information, and belief.

Signed: _____

Kurt Garrard

Executed this 26 day of March, 2020.

DECLARATION OF IAN BRUMANA

I, Ian Brumana, hereby declare under penalty of perjury that: I am the Controller at Peñasco Valley Telephone Cooperative, Inc.; that the forgoing document was prepared under my direction and supervision; and that the contents therein are true and correct to the best of my knowledge, information, and belief.

Signed: 

Ian Brumana

Executed this 27 day of March, 2020.